

Office of the Secretary, Interior

§4.616

the proceeding, such as an order approving settlement or voluntary dismissal.

PROCEDURES FOR CONSIDERING APPLICATIONS

§4.612 Filing and service of documents.

Any application for an award and any other pleading or document related to an application shall be filed with the adjudicative officer and serve on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in §4.609(c) for confidential financial information.

§4.613 Answer to application.

(a) Within 30 calendar days after service of an application, the Department shall file an answer. If the Department fails to answer or otherwise fails to contest or settle the application, the adjudicative officer may, upon a satisfactory showing of entitlement by the applicant, make an award for the applicant's fees and other expenses under 5 U.S.C. 504 in accordance with §4.616.

(b) If the Department and the applicant believe that they can reach a settlement concerning the award, the Department and the applicant may jointly file a statement of their intent to negotiate. The filing of such a statement shall extend the time for filing an answer for an additional 30 days from the date of filing of the statement. Further extensions may be granted by the adjudicative officer upon the joint request of the Department and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on to support the objection. If the answer is based on any alleged facts not already reflected in the record of the proceeding, the Department shall include with the answer either a supporting affidavit or a request for further proceedings.

§4.614 Settlement.

An applicant and the Department may agree on a proposed settlement of an award before final action on the application, either in connection with a

settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If the applicant and the Department agree on a proposed settlement of an award before an applicant has been filed, the application shall be filed with the proposed settlement.

§4.615 Extensions of time and further proceedings.

(a) The adjudicative officer may on motion and for good cause shown grant extensions of time other than for filing an application for fees and expenses after final disposition in the adversary adjudication.

(b) Ordinarily, the determination of an award will be made on the basis of the written record of the underlying proceeding and the filings required or permitted by the foregoing sections of these rules. However, the adjudicative officer may, *sua sponte*, or on motion of any party to the proceedings require or permit further proceedings, such as informal conferences, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application and shall be conducted as promptly as possible. A motion for further proceedings shall specifically identify the information sought on the disputed issues and shall explain why the further proceedings are necessary to resolve the issues.

§4.616 Decision on application.

The adjudicative officer shall promptly issue a decision on the application which shall include proposed written findings and conclusions, and the reasons or basis therefore, on such of the following as are relevant to the decision:

(a) The applicant's status as a prevailing party;

(b) The applicant's qualification as a "party" under 5 U.S.C. 504(b)(1)(B);

(c) Whether the Department's position as a party to the proceeding was substantially justified;

(d) Whether special circumstances make an award unjust;

(e) Whether the applicant during the course of the proceedings engaged in